

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, August 7, 2013, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Cathy Beecham, Michael Cornelius, Tracy Corr, Jeanelle Lust, Dennis Scheer, Lynn Sunderman and Ken Weber (Chris Hove absent); Marvin Krout, Steve Henrichsen, Brian Will, Sara Hartzell, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Michael Cornelius called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Cornelius requested a motion approving the minutes for the regular meeting held July 24, 2013. Corr moved approval, seconded by Beecham and carried 5-0: Beecham, Cornelius, Corr, Scheer and Weber voting 'yes'; Lust and Sunderman abstained; Hove absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

August 7, 2013

Members present: Beecham, Cornelius, Corr, Scheer, Weber, Lust and Sunderman; Hove absent.

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 13005, SPECIAL PERMIT NO. 1787A, SPECIAL PERMIT NO. 13035 and SPECIAL PERMIT NO. 13037.**

Ex Parte Communications: Cathy Beecham disclosed that she had a phone conversation with Pat Anderson-Sifuentez who lives in the Everett Neighborhood Association, confirming that Item No. 1.4, Special Permit No. 13037, would have a public hearing today. She advised Ms. Anderson-Sifuentez to go ahead and send an email to the Commission, which she has done.

Item No. 1.4, Special Permit No. 13037, was removed from the Consent Agenda and scheduled for separate public hearing due to letters received in opposition.

Weber moved approval of the remaining Consent Agenda, seconded by Corr and carried 7-0: Lust, Sunderman, Corr, Scheer, Beecham, Weber and Cornelius voting 'yes'; Hove absent.

Note: This is final action on Comprehensive Plan No. 13005, Special Permit No. 1787A and Special Permit No. 13035, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

SPECIAL PERMIT NO. 13037
FOR THE EXPANSION OF A NONCONFORMING USE
ON PROPERTY GENERALLY LOCATED AT
SOUTH 13TH STREET AND E STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 8, 2013

Member present: Lust, Sunderman, Corr, Scheer, Beecham, Weber and Cornelius; Hove absent.

Ex parte communications: Beecham previously disclosed the phone conversation she had with Pat Anderson-Sifuentez.

Staff recommendation: Conditional approval.

Staff presentation: **Brian Will of Planning staff** noted that the Commission has received letters in opposition. This is a special permit to expand a nonconforming use. This convenience store location is nonconforming due to lack of required separation for off-sale alcohol. Today, if this use did not exist, the applicant would be required to get a special permit for the alcohol sales, and it would not meet the required separation and would not be eligible; however, this use pre-existed 1994 and as such is deemed to be nonconforming.

The property is located at the southwest corner of the intersection of South 13th Street and E Street. It is an existing store, and this special permit is specifically for an expansion of that store for a 12' x 40' addition on the south side. The property is zoned B-3 with 20' front yard setbacks applicable along 13th Street and along E Street, with 5' setback along the side yard adjacent to the apartment building, and 30' setback along the alley. It is the setback along the alley which is being requested to be adjusted from 30 to 23 feet to allow for this expansion.

Will explained that part of the rationale behind the Planning Department support of this application is that there is an intervening alley between this expansion and the residential apartment building to the south. That is where the setback for the B-3 would be 30', whether there is an alley or not, with no credit given for the existing alley. The setback is actually 39' if the alley is taken into account. Therefore, staff supports the adjustment of the setback.

Will also advised that the entrance door to the store is not changing. The property will remain the same with the exception of the addition on the south side of the building. Staff is recommending conditional approval and is supportive of the request.

Due to receiving some opposition, Lust wanted to clarify that even if the Planning Commission were to deny this request, the Casey's store will still be selling alcohol at that location because they are already legal. Will agreed. The sale of alcohol pre-exists and if they do the addition or not, he does not believe that will change.

Beecham asked for clarification of the process to notify neighborhood associations. Will stated that the Planning Department is required by the zoning ordinance to notify all surrounding property owners. In addition, as a matter of policy and procedure, those neighborhood and homeowner associations within one-half mile of the application that are on record in the Planning Department are also notified. The notice is mailed 10 days in advance of the Planning Commission hearing.

Proponents

1. Scott Cook testified on behalf of **Casey's General Stores**, 611 Gemini Rod, Sioux City, Iowa. He assured the Commission that this will not expand the beer sales at all. They are actually going to have a smaller beer cooler and it will be moved into the new addition. The purpose of the addition is to enhance the other services and sales such as candy, coffee bar, etc. It's actually giving the store a "facelift" on the inside. The doors are not moving so it will be no closer to the establishments than before. This store does not sell single drinks or hard liquor. They have had communication with a neighbor about some trash issues and they will be making a larger trash enclosure and install some outside cameras to help alleviate this situation. Cook believes this addition will help the neighborhood and will actually look better.

Corr inquired whether Mr. Cook is the owner of the property. Cook stated that he is not. He works for the Casey's corporation. It is a corporate store. Corr stated that she has concern about the one letter that indicates that some not so attractive behavior happened in the parking lot recently. What are your instructions to employees? Cook stated that the employees have had some training. They are instructed to politely ask them to leave but they do not want the employees to get involved. If the individuals do not leave, it is at that point that the employees are instructed to call the police. Corr strongly encouraged that business owners should open that dialog with the neighborhood associations so that they know what is going on. She urged that Casey's contact the neighborhood representatives before proceeding with any future projects. Cook assured that Casey's has become involved in this community.

2. Michelle Crites, 2111 SW 18th Street, District Manager for **Casey's**, advised that there is a list of things that the employees are asked to do. The manager at this location did not know what neighborhood association existed in this area. Crites then listed some

community events in which this store manager has participated, including providing coupons for sobriety. In September, Casey's approached the police substation about training the employees to know what to look for in suspicious behavior and when to report it to police. The police have met with the employees in that regard. She acknowledged that there was a management change at this store in the last year.

Beecham confirmed that the applicant has not had the opportunity to visit with the Everett Neighborhood Association about this store. Crites agreed.

Beecham observed that the notes in the staff report indicate that if this request is approved, it would allow for expansion for off-sale alcohol and that the permit is a pre-requisite to applying for the state liquor license. She asked staff to explain this notation. Will responded that typically, these permits end up in the Planning Department after someone has approached the state and often-times it requires an amendment to an existing liquor license, but not always. He was assuming that this would require a modified state liquor license, but perhaps it won't. If it does, this special permit needs to be approved prior to that. The city has to demonstrate that the application is in conformance with the local zoning regulations. Beecham sought confirmation that this does not refer to a plan to do hard liquor, sell singles, or change anything. Crites answered "no". There is no intention to bring in any hard liquor or anything along those lines.

Opposition

1. Pat Anderson-Sifuentez, 1500 S. 11th Street, who works for NeighborWorks Lincoln, testified in opposition. NeighborWorks works with the Police Department and local landlords, meeting with landlords twice a year. She went into this Casey's store at the end of June and talked to manager about coming to a meeting. They said that there was a conflict and the manager could not attend.

Anderson-Sifuentez clarified that she is excited about any kind of investment in the neighborhood, but while Casey's recently has worked with the Police Department and things have improved much over what it was 5-6 years ago, there are still some problems in that area. She submitted a crime map covering the past three years. Jon Carlson with Stronger and Safer Neighborhoods has worked very hard and they have come a long way in dealing with issues and poor landlording in the area. They do have some good landlords with good tenants, but they still have those few landlords that cause a lot of problems. Alcohol just complicates all of that. While she knows Casey's is grandfathered in, Anderson-Sifuentez would invite the investment but "if they want to be a good neighbor, they should take the alcohol out of the store completely". There are many gas stations in the area that sell liquor. We want free enterprise, but where do you draw the line? She does not want to see an increase in alcohol sales.

There is a blind corner on the north side of the building where people congregate and there is other illegal activity that goes on. When she invited the manager to the landlord meeting, there was probably a drug deal waiting to come down. The police happened to come along so we were able to make it clear that we are watching. There is a lot of activity in the alley behind the store. This area needs careful watching.

Anderson-Sifuentez submitted a letter in opposition from John Bussey, who is a landlord in the area.

Anderson-Sifuentez is President of the Everett Neighborhood Association, and she acknowledged that she did receive notice of this application as such.

Response by the Applicant

Crites acknowledged that there have been issues at this location in the past. They have planted flowers in the area where people tend to congregate. When the employees are picking up the trash outdoors, they are instructed to ask those congregating to leave. If they do not leave, the Police Department is contacted at that point. Crites believes they have been vigilant about the loitering or hanging out at the store. The manager's father passed away in June, so she was gone for a couple weeks and was unable to attend the landlord/neighborhood association meeting. She assured that the manager at this store does get involved in the community.

Corr wondered whether the video cameras will target the area that is hard to be seen, and whether signs will be posted under the area of surveillance, suggesting that if they know they are being videotaped it might deter some of the activity.

Corr also sought clarification that this application actually reduces the size of the liquor sales area. Crites stated that the new plan does have a smaller beer cooler and it is being moved. The new plan focuses on selling more ice and ice cream, and expands the coffee counter and sales floor to bring in more Hostess, Little Debbie's, and those kinds of snacks.

ACTION BY PLANNING COMMISSION:

August 7, 2013

Lust moved to approve the staff recommendation of conditional approved, seconded by Scheer.

Lust stated that she will support this application. There is already liquor for sale at this store. If we deny the application, the only thing that happens is the property does not get improved. As a frequent traveler to small towns, she sees some of the remodeled Casey's and they really are nice. She thinks they are making efforts to be a good corporate citizen. She wants to support improvement of the existing facilities.

Corr stated that she will support the application, but it is important and she wants to encourage some neighborhood activity there. She will support it because there is already alcohol sales at this location, and they are decreasing the size of the area devoted to alcohol sales. She thinks the video cameras will help increase the awareness and hopefully decrease the bad activity.

Scheer applauded what the neighborhood association is doing in watching the improvements in the last few years. At the same time, he applauds and admires new investment that we want to see happen in that neighborhood as well. However, he is inclined to let the separation buffer stay in place and thus he will not support the motion. It is a tough decision. He applauds the investment, but there are some great things happening in the neighborhood and it does not look like this application will help that overall kind of improvement to the neighborhood.

Cornelius stated that he will support the motion for the reasons already stated. Where he parts with Scheer is that while the wording of this application “expansion” seems to imply expansion of alcohol sales, that is not the intent. The intent is to facilitate reinvestment in this neighborhood which will contribute to improvement of the area.

Motion for conditional approval carried 6-1: Lust, Sunderman, Corr, Beecham, Weber and Cornelius voting ‘yes’; Scheer voting ‘no’; Hove absent. This is final action, unless appealed to the City Council within 14 days.

PRE-EXISTING USE PERMIT NO. 9U
FOR AUTHORITY TO ADJUST THE PARKING REQUIREMENTS
ON PROPERTY GENERALLY LOCATED AT
SOUTH 56TH STREET AND HIGHWAY 2.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 7, 2013

Member present: Lust, Sunderman, Corr, Scheer, Beecham, Weber and Cornelius; Hove absent.

There were no ex parte communications disclosed.

Staff recommendation: Conditional approval.

Staff presentation: **Brian Will of Planing staff** explained that this is an amendment to the pre-existing use permit for Edgewood at the intersection of South 56th Street and Hwy 2 that has been in existence since the late 1970's. The restaurant and office complex adjacent to the southeast is not part of this amendment. This amendment relates to the K-Mart building, Super Saver, Target, etc. This request is to reduce the required parking from 4.5 stalls per 1,000 square feet of floor area for office or retail uses and one space per 100 square feet for restaurants/bar uses, to one space per 300 square feet of floor area, regardless of use, except theaters.

As pointed out in the staff report, Will stated that the rationale for approving this adjustment is that it is consistent with other larger centers with a variety of tenants and uses. It takes into account a wide range of uses, often-times with non-concurrent peak demands.

What brings this one to the forefront today is that the Edgewood center originally started out as one integrated center under single ownership and management where we could approve an overall use permit with parking shared throughout. What has happened over the years, however, is that this center has now been sort of compartmentalized into different ownerships so that it becomes more difficult to approve a building permit in demonstrating that there is excess parking available. The owners have been notified of this amendment and some of them have had conversations. We are suggesting that from this point forward, each of these areas will provide a certain number of parking spaces based on the floor area being used, with no shared parking. All of the tenants meet the requirements of this reduction and it does grant some additional spaces for future expansion. Thereafter, excess parking stalls in another tenant's lot will not have to be relied upon. This makes a lot of sense and we have been talking about it for several years. Will advised that the proposed parking reduction is consistent with what exists in other centers and with what the staff may be recommending in any future amendments to the zoning ordinance.

Cornelius inquired about the timetable for making adjustments to the existing ordinance. Will stated that this adjustment is being discussed in association with the reFORM package that is currently under discussion.

Corr inquired as to the new number of parking stalls that would be required with this adjustment. Will advised that the new number is 1,834. It frees up about 600 parking spaces throughout the center.

Proponents

1. DaNay Kalkowski, appeared on behalf of the applicant, along with Dan Rosenthal from REGA Engineering. She agreed with the staff presentation and the staff report. This applicant owns the former K-Mart building and parking area. This amendment cleans up Edgewood and makes it more manageable. With the parking reduction, it provides some additional opportunities for growth and redevelopment, which is really important for this center with a lot of the uses turning over. This amendment will not impact any private covenants on the property. There are some private cross-parking easements that will stay in place. There are also some parking ratio requirements which do not change with this amendment.

Kalkowski advised that there have been multiple notices sent out. The Edgewood owners sent out notices to the association; they also sent letters to the same list that the Planning Department uses in notifying property owners, including 87 addresses, and the applicant held a neighborhood meeting with two people in attendance. The applicant has also had

a telephone conversation with a Target representative. They are not aware of any opposition or concerns about this amendment.

Kalkowski suggested that this amendment implements positive changes for the city and the property owners. All conditions are acceptable.

Corr applauded the applicant for the outreach efforts.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

August 7, 2013

Lust moved to approve the staff recommendation of conditional approval, seconded by Weber.

Scheer believes that this is really good timing and a really good process.

Motion for conditional approval carried 7-0: Lust, Sunderman, Corr, Scheer, Beecham, Weber and Cornelius voting 'yes'; Hove absent. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 09022A,
TO ALLOW A GAS STATION/CONVENIENCE STORE,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 33RD STREET AND YANKEE HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 7, 2013

Member present: Lust, Sunderman, Corr, Scheer, Beecham, Weber and Cornelius; Hove absent.

There were no ex parte communications disclosed.

Staff recommendation: Conditional approval.

Staff presentation: **Marvin Krout, Director of Planning**, made the staff presentation on behalf of Christy Eichorn, the planner who wrote the staff report. This application involves about seven acres at the southwest corner of 33rd Street and Yankee Hill Road, with a variety of uses in an area that is, once again, rapidly developing.

Krout went on to explain that about four years ago, this seven acres came in for H-4 zoning for an auto dealership, which now exists. Prior to that time, the Comprehensive Plan showed the commercial for this area confined to the 27th and Yankee Hill corridor. The general strategy in the Comprehensive Plan is to try to not have long strips of commercial land, generally attempting to focus commercial in nodes near intersections along major

roadways. However, this was a specific use for which we thought there was a need and market for additional auto dealerships in the south part of the city. 40th & Yankee Hill was approved a couple weeks ago.

Krout went on to state that the staff is concerned about making sure that the commercial does not continue to increase along Yankee Hill Road, and this original special permit excluded uses that tend to be the least compatible with residential uses in the last 100 feet along 33rd Street, including convenience stores with gas pumps, car washes and other similar uses.

Krout further advised that more recently, there was a request from the dealership for a combination quick lube and car wash that would be more or less accessory to the auto dealership. The staff considered it to be accessory to the dealership, but also worked to make sure there would be a 50' buffer with landscaping, including a double row of evergreen trees, and the car wash oriented such that the car wash doors would not face 33rd Street. This was found to be acceptable.

Krout went on to advise that this amendment is for the remainder of the site. The applicant is requesting authority to have a convenience store with gas pumping aisles and canopy. The previous amendment was done by administrative amendment because the staff believed it to be accessory to the dealership. However, in this case, the staff did not believe a convenience store would be considered accessory, thus this amendment. The staff worked to convince the applicant to reorient the building to make it more compatible and still retain the area to the east for residential development. By reorienting the building, it would back up to 33rd Street and be buffered with landscaping. The building itself would screen the light glow and the activity in front of the building. The applicant agreed to reorient the building to back up to 33rd Street with the canopied area and major activity screened by the building. Based on the applicant's agreement to reorient the building, the staff is recommending approval.

Beecham inquired about noise levels with a drive-thru. Krout advised that there is a noise ordinance in the city code (not the zoning ordinance) that is enforced by the Health Department. The rules are stricter for commercial uses adjoining residential uses. They are also stricter after 10 p.m. Beecham further inquired about the noise regulations since this property is adjacent to an area that will be residential. Would it be assumed that they would be more restrictive? Krout responded, stating that because the area across 33rd Street is a residential area, there will be more restrictive standards in effect. The drive-thru would be on the 33rd Street side, but it will be subject to the noise ordinance.

Proponents

1. **Mike Anderson**, 3201 Yankee Hill Road, testified as the applicant. Being a business owner and frequent traveler in this part of the city, he pointed out that the only closest gas station is the U Stop across the street from DuTeau, and it is very congested. He believes that there is a huge need for this convenience store in this area. He acknowledged that he has worked with staff and agrees to orient the building as suggested by staff. The previous owner, First Federal, was against this convenience store; however, since this design has been worked out with staff, First Federal is now in support. Anderson urged that this will be an overall positive addition to the area.

Anderson also acknowledged that First Federal is also the owner of the undeveloped area to the south and east.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

August 7, 2013

Lust moved to approve the staff recommendation of conditional approval, seconded by Scheer.

Corr commented that the key point of her support of this application is that the property to the south and east is not yet developed, so homeowners will know what they are getting into as it turns into residential.

As a resident in this neighborhood, Lust can attest that there is a need for this facility and she really appreciates the design and buffering. She believes it will fit in very well with the dealership and car wash that already exists.

Cornelius observed that it makes it easier when the applicant is willing to do some “outside the box” thinking and reorientation of the site to make it fit better with the area and for future residential across the street.

Motion for conditional approval carried 7-0: Lust, Sunderman, Corr, Scheer, Beecham, Weber and Cornelius voting ‘yes’; Hove absent. This is final action, unless appealed to the City Council.

COUNTY SPECIAL PERMIT NO. 13033,
THE PRESERVE AT CROSS CREEK 1ST ADDITION
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 63RD STREET AND ROCA ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: August 7, 2013

Member present: Lust, Sunderman, Corr, Scheer, Beecham, Weber and Cornelius; Hove absent.

There were no ex parte communications disclosed.

Staff recommendation: Conditional approval.

Staff presentation: **Sara Hartzell of Planning staff** presented the proposed community unit plan (CUP) that covers an area of about 34 acres. She advised that the application originally came in at about 76 acres, with 38 of those acres being located within the Village of Roca jurisdiction. The community unit plan application was proceeding as a split jurisdiction application, requiring both Roca and Lancaster County approval. The Village of Roca did deny the portion of the application located in their jurisdiction in July. Therefore, the application was reworked and that was the reason for the delay.

The application area is near the corner of 68th Street and Roca Road, which is a paved county road. A significant amount of the area is already zoned AGR, including this property. This is an area of significant acreage development.

Hartzell presented a revised site plan showing a different lot arrangement. Two lots have been identified as outlots with the hope of someday working with Roca to include them in the CUP lots. The staff wanted to see the two outlots preserved for future clustered development to provide a more logical and adjacent pattern, and that has been shown in the revised site plan.

Hartzell explained that the entire area was preliminarily platted in 2006. The new application increases from 10 to 14 lots. Because the applicant is preserving open space and providing a community sewer system, they are allowed to request the density bonus. The open space proposed includes an outlot that would be preserved under a conservation easement. The community sewer system was shown as a single lot previously, but because of the investment required, the applicant is proposing to do some multiple staged cells as they build the houses because lagoons function best when they have water in them. In order to have enough water in the lagoon, it must be kept sized according to the houses using it. That is why the lagoons are being phased. When they reach development of 10 houses, they would come in and do the underground and the lagoons would go away.

Hartzell then pointed out on the map that the existing houses along the fringe of the application area have a similar exposure to the number of lots as they did on the original application. The main change is in the cul-de-sac area where there are four lots instead of three.

Lust inquired whether the reason that Roca denied the application was because it did not comply with the 3-acre ordinance for Roca. Hartzell explained that Roca had recently adopted a piece of legislation providing that if an application was in split jurisdiction and it was for a CUP and used community sewer, they would go by the requirements of Lancaster County. So they would have been able to go under three acres. Hartzell believes there was some concern about the sewer system.

Lust sought to clarify again that the Roca ordinance requires 3-acre lots in the AGR zoning district. Was that their reason for denial? Hartzell further explained that if the applicant had submitted just a preliminary plat, they would be required to have 3-acre lots; however, the additional code provision adopted by Roca allowed them to drop below the three acres with a CUP. Hartzell did not know the reason for denial.

Lust inquired about green space on the existing approved plat. Hartzell explained that the existing approval is a preliminary plat and not a CUP, so there was no clustering, strictly following the AGR requirements. The CUP allows the clustering and permanent green space.

Sunderman pointed out that the Commission has received a lot of letters regarding covenants and private agreements. How does that apply to the role of the Planning Commission? With regard to an application for a special permit community unit plan, **Brittany Behrens, Deputy County Attorney**, advised that the responsibility of the Planning Commission is to review said application for adherence and conformance with the Comprehensive Plan as well as the regulations in the zoning ordinance. Restrictive covenants are a private agreement between the landowners. The County and/or City do not have any privity with regard to enforcement, compliance or regulation of restrictive covenants. Those restrictive covenants are merely between the landowners and developers and must be enforced privately.

Beecham asked for clarification of Analysis #11 which states that the City of Hickman noted that the application supports the Hickman Horizons goals of the Hickman Comprehensive Plan and recommends approval of the application. Hartzell pointed out that the area of this application is within ½ mile of Hickman's 1-mile ETJ (extra-territorial jurisdiction). When an application is that close, the Planning Department usually sends a copy to Hickman just for comment. If the property were within the Hickman ETJ, it would have required approval by the City of Hickman. In this case, the City Manager of Hickman reviewed the application according to the Hickman adopted Comprehensive Plan and determined that it meets their goals. Hartzell does not believe the application was taken to the City of Hickman board or planning commission. Hickman is different – they have planning jurisdiction within the one-

mile but they also show a “horizon area” in their Comprehensive Plan which goes out two miles beyond.

Weber sought to confirm that this applicant is expanding from lagoons and will convert to community sewer system. Hartzell understands that they want to continue to try to work with Roca to come to some kind of agreement on what the Roca side of this could look like.

Lust asked whether the lagoons are included in what the Planning Commission is being asked to approve. Hartzell explained that the lagoons are in the same subdivision of 76 acres; the proposed CUP only covers the area within the Lancaster County jurisdiction. The lagoons would be serving the houses in Lancaster County, but whether they are on one side or the other, they will be regulated by NDEQ and the City/County Health Department.

Lust confirmed that the revised application is for 14 potential houses in the part in Lancaster County. Will they be served by the lagoons? Hartzell stated that it will be a community sewer system. That is the requirement of a density bonus. NDEQ requires 3 acres for an individual system. When you reduce that lot to less than three acres, you have to make that system have a 3-acre lot to sit on.

Corr noted the letter about an airstrip. Hartzell stated that the private airstrip is on Wttstruck Road, which would be the next mile line about half-way into that section. It is far enough away that it does not show up on the aerial map.

Proponents

1. Mike Eckert of Civil Design Group appeared on behalf of the Builders Achieving Excellence (BAE) group, the developer of The Preserve, including Sam Manzitto, Sr., Dan Kubr and Dan Klein. This project was started in the early 2000’s. After the housing recession as things began to turn around, the developers were looking at different ways to do this development. He referred to other developments in the community which have a community sewer system, i.e. The Bridges, Hidden Valley, Cardwell Reserve, Cardwell Woods, Longview Estates and Dakota Springs, which have all seen good success. It is clearly a market trend with smaller lots and a community sewer system.

Eckert advised that there was some discussion with some of the neighbors about some potential change. The developers met with the neighbors last year and it appeared that they were extremely happy with the potential change to go to smaller lots. They had another meeting in February, when an adjustment was made to the number of lots on 64th Street, which original showed 4 lots. And, in response to the neighbors, that plan was modified and one lot was moved to the interior with the cul-de-sac.

Eckert explained that the Village of Roca does not have a CUP ordinance – just preliminary plat with 3-acre lots. He acknowledged that these developers went through the process with the Village of Roca and the Planning Commission to change their regulations such that a cross-jurisdiction plat with a community sewer system would follow the Lancaster County CUP regulations. But when it came time to run the proposed community unit plan through, the Roca Planning Commission voted 4-2 against it, with one abstention, and it was then also voted down by the Village Board on a vote of 0-4. These were very contentious meetings without a lot of order. The four Planning Commissioners in opposition did not give a reason – they voted without any comment. Ultimately, Eckert believes they just did not want the increased density.

Eckert then explained how the developers had to go back to the drawing board and that is where the change in the community sewer system came about, going from a plant to a lagoon at the initial stages. Note #5 on the revised site plan states:

The developer proposes the use of a community waste water system. Initial system will be a full retention lagoon built in stages. Conversion to a treatment plant will take place if a community unit plan within the Roca jurisdiction is approved and lots are platted in Outlot E. All waste water systems shall be approved by a permit from the State - Nebraska Department of Environmental Quality”.

Eckert stated that without the entire mass, the plant cannot be justified.

Eckert explained that they will run an 8” sanitary sewer line from all the lots on the site that will gravity flow down and the pipe will be run into the lagoon. The conversion to the plant later on will be very easy.

Eckert then displayed photographs of the landscape demonstrating the distance to the Baker property and the view to other existing homes. He also submitted exhibits depicting the type of homes that will be built in this proposed CUP. The houses will be built very similar in cost and in size as the adjacent houses.

Opposition

1. **Amy Baker**, 15600 South 63rd Street, which is in The Preserve at Cross Creek, testified in opposition. She purchased her home approximately seven years ago. She displayed maps comparing what they were shown when they purchased the property and what is being proposed today. The undeveloped land which is under consideration today is what she sees when she looks out her front door. She can see almost all of this land from her driveway. When the Bakers purchased their home, they were told that the undeveloped land was going to be developed in three-acre lots. They were

also led to believe that this was definitely going to be a very low density rural setting, and that the new area would match the current covenant standards. Thus she believed it would be three-acre lots.

Baker further indicated that none of the neighbors throughout this whole seven month ordeal expected to be in a fight with BAE, the developer. They all trusted that BAE would keep their word about the density when they purchased their homes. If the density is allowed to be increased, Baker believes it will have a negative impact on the integrity of the community and it will have a negative impact on the values of the homes in The Preserve at Cross Creek. People make a very big investment in their homes and the neighbors are very concerned about the impact on our home values. The neighbors all believed that this rural setting would be preserved and Baker is personally very, very angry to have been put through this. The builders have been very dishonest and hostile towards these neighbors; they have acted liked bullies in certain instances; and at this point, Baker does not trust a thing they say.

Corr inquired whether the Bakers were one of the original purchasers in that area. Baker believes there were maybe five or six homes before they purchased in October of 2006.

2. Chris Snyder, 6400 Winterberry Lane, testified in opposition. He and his family moved back to Nebraska about three years ago, moving away from the hustle and bustle of urban life in Illinois. When they found the area around The Preserve, they instantly fell in love with this property and its picturesque setting and his children call it “dream land”.

Snyder is opposed to the proposed plan and shared a power point showing the beauty of this area. The neighbors have always been led to believe that this area would only contain eight lots east of the tree line. The landscape has now changed to the proposal of 14 homes, approximately a 75% increase in density when you consider the eight homes promised.

Snyder pointed out that the entire section of ground split between Roca and Lancaster County actually included only 18 homes – that is what he bought into. Snyder then displayed photographs of the neighborhood, emphasizing his concern for the safety of the children in the neighborhood. There are over 30 kids that enjoy riding bikes and four-wheelers, living a carefree country lifestyle on an acreage setting.

Snyder referred to page 2 of staff report which references the Chapter 7 requirements set forth in the Comprehensive Plan, where proposals for acreages are to be evaluated based on several factors, including availability of emergency services. He pointed out that the rural Hickman Fire District did not have any specific recommendation, and that is his concern, i.e. emphasizing the safety for the community.

Snyder then shared a marketing brochure from 2005, which indicates that the “natural beauty of wooded fields, wildflowers, and wildlife add a touch note of serenity to your

surroundings”, close to nature, an ideal environment for raising families; a place where the charm of elegant architecture can co-exist with simple nature. Snyder suggested that no one here today can argue that this touch of actual beauty will not be the same if the Planning Commission votes in favor of this proposal. Snyder then introduced his 10-year-old son who enjoys this area and would love to consider this “dream land”.

3. Dr. Dan Baker, who has lived in The Preserve since October 2006, testified in opposition. He and his wife bought a house and a vision and a concept, and they bought a dream – the final place to live their lives. It is the good life. It is everything the builder said they would deliver. Everything was going well until November of last year when Kevin Buis had a chance encounter with the builders outside the front of his home where they were surveying the open area. They said they were thinking about making “slight” changes. Dr. Baker informed the Commission that the homeowners had to call the meeting with the builders. The builders did not come to the homeowners.

In January of this year, the homeowners association asked the builders to meet. The builders said the market for home buyers for three acres is not there. In checking with the Board of Realtors, Dr. Baker has found that there was no independent research to support that claim. If we do not keep this under the governance of the homeowners association, the developers are free to do whatever they want and these existing homeowners are going to suffer for it. The builders said that it is going to happen. They did not offer to negotiate. They said they could walk away and there could be a hog farm out there, or they could sell to new builders who would put cracker box houses out there.

Dr. Baker observed that at the May 28th meeting of the Roca Board, there were no homeowners present because no one had been notified. At that meeting, the developer said the homeowners were fine with the proposal. Dan Kubr told the Board that the developer had a signed letter of agreement from the homeowners association, but Dr. Baker suggested that no such letter has ever existed. At the meeting held on June 10th before the Roca Planning Commission, 15 of 18 homeowners showed up and no one spoke in favor. The Roca Planning Commission declined to accept the proposal on a vote of 4-2 with one abstention. No one along Roca Road nor 54th Street knew about this proposal. They need to let people know what they are planning.

Dr. Baker pointed out that David Malcom testified before this Planning Commission on July 24th in opposition, with concerns about the sewage system.

On July 11th, the Roca Village Board voted unanimously to deny the proposal.

Dr. Baker called NDEQ about the sewer system and he was told that NDEQ had met with the builders and they had said they would build a lagoon for the first five houses, and then when they build the second five houses, they would build the sewer system. Dr. Baker

stated that his point is that the developers have not worked with the neighbors and they have not been cooperative with the neighbors. Nobody wants this. Dr. Baker requested that the Planning Commission affirm the original plan and decline this proposed change.

Dr. Baker purchased his home in 2006. He then submitted part of the advertising that appeared in the Parade of Homes magazines over the last several years that talks about preserving the rural life in this area.

4. **Ron Peters**, 15605 S. 63rd, in The Preserve at Cross Creek, testified in opposition. He purchased his home in 2004, and was probably among the first to be out there. He also sent a letter of opposition. Peters noted that in testimony during the previous hearing today, Commissioner Corr stated that, "at least the housing is not yet there. They will know when they build what they are getting into." Peters stated that he built thinking he knew what he was getting into, but he didn't. Now there is going to be an increase in concentration, from 3-acre lots or larger to slightly over 1-acre lots. When Peters built his home, Mr. Klein informed him that he must adhere to the covenants, which "required" a septic system. Now, it's an option. It's an option in the rest of the development because they want to change what they promised. It is very upsetting. Peters and his wife came from the Sandhills where they did not have covenants, and when they moved to The Preserve, they were excited to have covenants. Never, ever in his wildest dream did he think he would have to be conflicting with the same gentleman that wrote the covenants. They truly want to change what we bought into. It is disgusting and it makes him angry. Peters requested that the Commission please ask the developers to adhere to the promises made.

Cornelius sought clarification that it is the density in particular to which the neighbors object. Peters acknowledged that it is the density increase. The spaciousness of the lots is going to change. He is also troubled because he believes they are going to have a cesspool, and the lowest area of the undeveloped area is nearest his home.

Beecham asked about the topography of Peters' property. Peters stated that his property is probably as remote in the community as any of the others, and his property sits low.

5. **Matt Konzem**, 6100 Prairieflower Lane, testified in opposition. He also submitted a letter in opposition previously. A few years ago, the developers purchased the land for a rural subdivision. He guesses they paid a premium for it and put a lot of money into it. It is a wonderful subdivision. They did a great job. But now, they want to split this undeveloped portion of this planned rural subdivision into more lots than originally planned. He assumes it is because of the economy. He can only assume that maybe they are under some tight financial strain and looking at some possible options to help them out. But, Konzem suggested that the developers knew the gamble they took when they purchased the property and drew up their speculative plans. They knew there was a risk and they took the chance anyway. It was a speculative risk. It might have paid off big but unfortunately for them, the markets fell out and it hasn't recovered.

By splitting the planned subdivision into more lots than previously, Konzem believes that the developers are trying to make back that money at the current homeowners' expense. If a lot of houses are built, Konzem is fearful that the existing homeowners' views, trees, open space and property values will be negatively affected.

Konzem purchased his home in the spring of 2012. He assumed that the existing big lots would be joined by other big lots with similar covenants. He did not work directly with the developer so no one made any promises to him. He just assumed that it would remain a constant. He did not realize that he was taking on this risk.

6. Kristi Janda, appeared on behalf of the Roca Village Clerk. She clarified that the change to the CUP regulations was passed so that it could allow property in the Roca jurisdiction to go into a CUP under the County-City rules – not that we “would”, but allow us so that we “could”.

Janda also clarified with respect to Dr. Baker's comment that he was not notified. The Village Clerk did post and advertise a notice, but they do not send individual letters to property owners. Since the meeting on this application, they have discussed posting a sign on the affected area in the future.

Janda advised that the Village Board did make their decision based on not wanting to reduce the lot sizes. Their main concern was leaving the lot sizes at 3 acres and not reducing them to 1.5 acres, even though it was not stated at the meeting.

At the May 28th Board meeting, when there were no homeowners present, one of the Board members did ask the developers if there was any opposition and they said “no”, and then they had several meetings where there was a lot of opposition.

Staff questions

Lust confirmed that the land is currently zoned AGR. Hartzell replied that it is zoned AGR with an approved preliminary plat by both Roca and Lancaster County. Lust then inquired what kind of uses are allowed in AGR, and Hartzell responded residential, acreage, other special permitted uses and agricultural uses.

Weber inquired about the treatment plant and whether is it going to have any possibility of discharge into a nearby creek. **John Chess of the City-County Health Department** in charge of water quality, explained that community plans, or community sewage systems or wastewater treatment facilities are regulated by the state. When you look at community wastewater treatment plants, you have lagoons that either discharge or don't discharge. You also have sewage treatment plants that put their effluent into a stream bed, and there will be certain requirements and certain standards that they have to meet as dictated by the state. The process is that the engineers for the development will contact NDEQ and identify what they are proposing. They submit the plans to NDEQ under Title 123, whether

they are going to go with a wastewater lagoon that either discharges or not, or wastewater treatment plant. NDEQ then responds back as to what the rules and regulations require. When they reach agreement on what is going to be built and that meets requirements, NDEQ will issue a construction permit. If the construction permit is issued for a lagoon, then it will be built to a lagoon with those standards as submitted to NDEQ. At the completion of construction of the wastewater treatment facility, the designing engineer will sign off saying that it meets all of the standards as submitted to NDEQ. If it is a treatment plant which requires discharge, typically NDEQ requires effluent level and effluent testing on a quarterly basis. They also require an operator, depending upon the facility, that must be certified by the State of Nebraska.

Weber confirmed then that there is the possibility for discharge if it is a treatment plant. Chess responded, "definitely, yes". Weber asked whether it is safe for kids that are playing in it. Typically, the effluent limits meet what EPA and the State of Nebraska require. Basically, there are about 1,000 wastewater treatment facilities across the State of Nebraska that are either trailer courts, CUP's like this, or SID's, with discharge lagoons and non-discharging lagoons, so it is not an uncommon situation. If the treatment plant is operated according to standards, it should be safe for the environment and the people.

Weber inquired about the elevation of the lagoons in the proposed CUP arrangement. Hartzell believes that the developer specifically chose the site for the lagoons because the sewage would flow down the hill. The northwest corner is cut through just a little bit by a creek, so that would be the low point on the property.

Beecham asked for an explanation of how the sewage treatment differs from what is already approved on the site and what is being proposed. Hartzell explained that it is currently approved with individual wastewater. Each lot is approved for septic systems; however, if the water does not percolate through the soil quickly enough, they could do above ground lagoons as well. Chess added that city ordinance requires that any individual on-site wastewater system be placed on at least three acres. Hartzell then suggested that as soon as you cluster lots on less than three acres, it implies that there is going to be some other arrangement such as a lagoon system.

Beecham asked for an explanation of the note about the sanitary sewer crossing over the top of the culvert. Hartzell explained that there is one point where the sanitary sewer would cross over the top of a culvert. Because these are public roads, the main concern is liability of the county if there is some kind of damage to the sewer pipe if the county would have to do any maintenance on that culvert. There is a condition that would require that the sewer pipe is somehow clad or armored in some way to protect it from being damaged.

Scheer inquired whether the regulations on the release of effluent are the same from NDEQ for a city the size of Lincoln and a development of this size. Chess knows that Lincoln uses ultraviolet to disinfect down to chloroform limits and he would expect there is some similarity, but he didn't know for sure. What is typically regulated is ammonia and

chloroform bacteria. Removal of chloroform indicates that the sewage has been treated and the pathogens removed. Those are two key items that he suspects are very close. Scheer observed that Lincoln obviously releases effluent to Salt Creek. He wanted to be assured that we would not expect a different kind of quality of effluent in this situation. Chess explained that when they want to discharge to the intermittent stream in the wastewater treatment plant, they would apply for a national pollution discharge permit, and at that time NDEQ will set the limits of their tolerants as far as what they can discharge. Depending on the system, they will require monitoring maybe four times a year. He assured that there will be discharge limits.

Lust requested clarification of what the Planning Commission is being asked to approve as far as the number of lots based on the conflicting testimony today. Hartzell suggested that it might be the difference on how a planner looks at it versus a citizen. The individuals who testified in opposition are looking at the tree line as the division and the planner looks at the ETJ line. Hartzell pointed to the two extra lots on the map. They are showing one larger outlot with open space for possible future development should they be able to work something out with Roca. The original application clustered more lots toward the eastern side because the western lot had trees and an overhead power line. But without the Roca land, the number of lots on the county side has changed. The Planning Commission is being asked to approve 14 lots. The ETJ cuts along the lot that is not part of the CUP. This is a change from 10 lots to 14 lots.

Sunderman asked Hartzell to explain the advantages of clustering in a CUP. Sara stated that the Comprehensive Plan provides that acreage lots be approved in appropriate places, i.e. water supply (this property has rural water); road condition (this property has two paved roads); and existing approved acreages (this property has an existing acreage kind of feel). The advantages of clustering in a CUP rather than three-acre lots is that we get those green spaces in a permanent outlot. The trees will never be cut down. We get the outlot under a conservation easement held by some nonprofit, likely the NRD, which would also be permanently protected and never destroyed, giving us some water quality benefits. Because we can put those dwelling units in an area where we have services to support them, staff is of the opinion that the extra lots is a fair trade. The smallest one is 1.36 or 1.38 acres, and the largest lot is just under three acres, i.e. 2.98. They vary in size in between. These would still be considered acreage lots.

Response by the Applicant

As far as the wastewater, Eckert submitted that the standards are pretty much the same. It is all regulated by the state. He referred to acreage developments west of Lincoln, including The Bridges which has a treatment plant and polishing pond. The ammonia levels were already too high from Cardwell Reserve so they were required to have the polishing pond. There are treatment plants in The Bridges, Cardwell Woods, and Foreman Ridge with other urban lot homes which were all built and sold for very high prices and all of the lagoons and treatment facilities are within one mile. It has been done time and time again, and it is a market shift that the developers are seeing. The Village of Cheney discharges into some lagoons east of 98th Street and there are a multitude of 3- and 5-acre lots developing out there.

Eckert further submitted that NDEQ did not want this development to discharge into the creek, so the alternative is a full retention lagoon. It provides one point of control, and it is at the lowest part of the property.

As far as economics, Eckert suggested that there is not going to be any more profit at the end of the day. It will cost the developer \$150,000 to run all the sewer lines to the lagoons and he would guess \$20,000 to \$30,000 to build the lagoon. The treatment plant will run another \$200,000. This isn't about the money as much as it is about creating a product that a group of home builders with over 100 years of experience see in the market. The home builders are seeing a transition – those that want to live in the country but do not want to have to take care of three acres. These developers are adjusting to something that is permitted under the current CUP regulations.

As far as preservation, Eckert assured that the tree rows will be maintained. There will be other green space, i.e. 20% of green space to get the 25% increase in density. Ultimately, we have a situation where there are 10 lots today within the jurisdiction of Lancaster County, and this is a request to increase that to 14 lots. He also concurred that it may be 16 lots someday.

Eckert understands that the existing homeowners bought a house with the understanding that there would be a series of 3-acre lots beside them. Mr. Peters will have a 2.98 acre lot behind him, with one more lot approximately a football field away from his house. Mr. and Mrs. Baker will have to drive by two lots on their way out of the driveway instead of one. Eckert believes the developers have made a good compromise because the Snyders will have three lots across the street from them, which is what was originally shown. There is a 40' elevation drop from the Snyder's house to the trees so the houses will be down below them. Eckert believes that these are relatively benign impacts, also considering the fact you are seeing exactly what is being proposed in terms of value and square footage. Therefore, at the end of the day,

the impact will be minimal. There are obviously people that want to enjoy the country lifestyle. The new homeowners are not going to race up and down the roads and cause a lot of problems. They will also have families.

As far as covenants, this proposal will not change the existing covenants for The Preserve at Cross Creek. The developers are on record saying that in the new phase from the tree row to 64th Street, the covenants will be the same – same square footage, same restrictions on outbuildings, etc.

Eckert also noted that the developers have had to wrestle with changes in the banking environment. There was testimony about promises that were made. Those were all driven by the bank based on the number of lots being sold before allowing the paving. This proposal allows an opportunity to satisfy the market and the bank, and will provide the neighbors to have Sam Manzitto build those lots from the trees over. They know what they are getting and that is worth a lot. If this does not work and they cannot hold onto this property, there are no covenants on that land today. It has never been final platted. Someone else could come in and build outbuildings. It has changed and it is unfortunate for everyone involved. But, things change and things evolve.

Eckert further pointed out that the code provides a 25% density bonus if 20% of the green space is preserved and if you do a community sewer system. This proposal is in conformance with the Comprehensive Plan. We have a clean staff report. The applicant is in complete harmony with staff on the design, which meets the standards of a county CUP. Eckert respectfully requested a vote of approval.

Scheer confirmed that the new proposed plan shows that the access to the lots along Elderberry Lane will occur off of Elderberry Lane and not off of a private driveway back to the Peters' lot. Eckert agreed. Scheer also confirmed that there will be no access southbound from that private driveway into any of those lots. Eckert again agreed, stating that access will be onto 63rd Street and Elderberry Lane with an approved county curbcut.

ACTION BY PLANNING COMMISSION:

August 7, 2013

Lust moved to approve the staff recommendation of conditional approval, seconded by Sunderman.

Lust commented that she understands why the homeowners in the area are concerned about change from what they were initially promised, but we have to look at what is going in there – an increase of four lots and four houses with the potential of 16 in the future. It is not an overwhelming density surge. Furthermore, by going with this plan, they get guaranteed green space preserved. Although they have concern about the sewage system, they are getting the kind that is approved all over the state, which is actually an improvement over individual lagoons. She believes the developers are doing a good job of trying to keep this as an acreage development. It would have been easy to sell this

property off. She believes the developer should actually be given credit for trying to preserve it as acreage lots.

Weber stated that this is a tough decision. If he were a homeowner there, he would also be against this. He would not want more houses and changes beyond what he thought was going to be there. However, the Planning Commission has to consider the fact that the applicant is addressing and adhering to the current laws upon which the Planning Commission makes decisions. He would not like the changes that are being made as a homeowner in the area, but it must be recognized that the developer is following the existing regulations.

Scheer commented that he would love to see the northeast corner, where there are two lots, go back to one lot. That would make a transition from what exists to what is being proposed. It would be an easier transition but he does not know all of the circumstances. Scheer agreed with the comments made by Lust and Weber.

Corr also finds this to be a tough decision. She stated that she understands because as a property owner in this situation she would be irate. As a Planning Commission member, she wouldn't exactly call it a "clean" staff report because the applicant is requesting a reduction in lot size. She submitted that the Comprehensive Plan supports the pattern of existing acreages, which would be the 3 acres, not the 1.5 acres. Corr then addressed the developer, stating that she learned this when she was an individual coming before the Planning Commission – when an applicant comes before the Planning Commission, "you have to have your ducks in a row" and that means working out the problems with the property owners before coming before the Planning Commission. There are 4 out of 8 homeowners here who do not like this plan. That has to be taken care of before coming to the Planning Commission.

Corr also stated that she is a little irate watching the expressions and reactions of the applicant to what is being said during the testimony, and it is inappropriate. She will definitely vote no because of those reactions.

Sunderman observed that the covenants are not part of the Planning Commission's decision. Focusing on the covenants has a tendency to take us away from what the Planning Commission should be considering – is this new proposal compatible with what is there? Sunderman believes that it is compatible. He thinks it is a good plan and that it will fit in well in the long run.

Cornelius stated that he has listened to the neighbors and he understands the objections. But he wishes he understood better the source of the bad feelings here. He has learned on the Planning Commission that it is very easy to get used to being next to a big open space and begin to feel proprietary about that open space, but that open space actually represents uncertainty because until it is developed, you don't know what can happen. We hear about threats, but he suggested that when a landowner says he has to sell, that is not

a threat. Although this is a large increase in percentage, it is only four homes. He also sees that these homes are going to be developed in such a way that they are compatible with the existing homes. This is going to be a relatively low density, low impact development – almost no impact over what is already approved. He will support the motion.

Motion for conditional approval carried 5-2: Lust, Sunderman, Scheer, Weber and Cornelius voting 'yes'; Corr and Beecham voting 'no'; Hove absent. This is final action unless appealed to the Lancaster County Board of Commissioners within 14 days.

There being no further business, the meeting was adjourned at 3:35 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 21, 2013.